



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

counsel go so far as to mis-state the law to the prejudice of the accused, and especially when such error is not corrected by the court, a new trial should be granted. *People v. Smith*, 121 Cal. 355. For a clear statement of the reasons for forbidding counsel to draw inferences from failure of co-defendant to testify, see *State v. Cousins*, 58 Ia. 250.

DAMAGES—MITIGATION OF—ERROR IN TRANSMISSION OF TELEGRAM.—Plaintiff shipped a carload of apples from Oregon to California and drew on the consignee at \$2.00 per box. The consignee telegraphed a refusal to pay more than \$1.25. In reply plaintiff delivered to the defendant company a telegram addressed to his California agents authorizing them to accept \$1.80,—but the telegram as delivered read \$1.08. The agent, a bank, collected at that price and completed the sale by delivery. When the mistake was discovered, the defendant succeeded in getting an offer of \$1.50 from the consignee, which the plaintiff refused and elected to sue the company for its negligence. *Held*, that plaintiff's election to retain \$1.08 was no new offer, but an effort to make the best of a bad bargain. The company was still liable to him for negligence, but he was bound to mitigate damages and so can recover only the difference between \$1.80 and \$1.50. *Bentley v. Western Union Telegraph Co.* (Wash., 1917), 167 Pac. 1127.

Two judges dissent on the theory that by accepting the \$1.50 offer plaintiff would have lost the right to further recovery from the company because the acceptance and not the mistake would then have been the proximate cause of loss. They insisted that the damages should be the difference between the price in the telegram as sent and as delivered. This position, however, is untenable, for it is an elementary principle of the law of damages that one who suffers through the negligence of another is bound to reduce his loss by all reasonable means and can then recover the balance from the tortfeasor. Defendant contended that when plaintiff refused the \$1.50 offer, he made a new contract and so this new contract and not the error was the proximate cause of his loss; that he might well have rescinded the original contract with the consignee who must be deemed to have accepted fraudulently, since he himself had already offered more than the price at which the sale was consummated. Cases cited in the opinion, however, seem to justify the decision, that a contract entered into by mistake through the negligence of the agent may be ratified without losing the right of action against the agent. The offeror may elect to be bound by his contract and need not subject himself to the risk of doubtful litigation, particularly as here in a distant forum, and where the subject matter of the controversy is perishable and may deteriorate *pendente lite*. Cf. *Reed v. Western Union Telegraph Co.*, 135 Mo. 661; *Pepper v. Telegraph Co.*, 87 Tenn. 554. The case of *Western Union Telegraph Co. v. Shotter*, 71 Ga. 760, is a strong authority in point. But the closest analogy is presented by *Ayer v. Western Union Telegraph Co.*, 79 Me. 493, where an offer to sell lath at \$2.10 per M. was incorrectly transmitted \$2.00, and accepted at that price. Though the mistake was discovered before shipment the court held that the telegraph company was the agent of him who first employed it and a

loss occurring through its mistake must be recovered from the agent and not from the offeree. In the principal case there was the additional element, not present in the other cases, of knowledge of the mistake on the part of the offeree, and a second larger offer made by it in consequence of knowledge, and yet the holding is the same as if no such knowledge existed. A dictum of the Maine court in the case above cited seems to hint at a possible defense had the element of fraud been present. "Of course the rule above stated, presupposes the innocence of the receiver, and that there is nothing to cause him to suspect an error." Though mere *obiter* not necessary to the decision it raises the question at least, would not the decision of that court have been for the defendant in the principal case?

DEFENCE OF THE REALM—HABEAS CORPUS.—Appellant, Arthur Zadig, was born in Germany, but had become a naturalized British subject. By an order of the Secretary of State under Regulation 14B of the Defence of the Realm Regulations, Zadig was interned in a detention camp without a trial except for a hearing before an advisory committee presided over by a person who held or had held high judicial office. The reason given in the order for internment was that it was expedient for securing the public safety and the defence of the realm, "in view of his hostile origin and associations". Regulation 14B purports to be authorized by the Defence of the Realm Consolidation Act, 1914 (5 Geo. 5, c. 8), the relevant part of which is section 1, sub-section 1, providing that "during the continuance of the war" the Crown has power "to issue regulations for securing the public safety and the defence of the realm," and particularly to prevent assistance or information from being given to the enemy. A rule *nisi* was obtained calling upon the respondent, commandant of the place in which Zadig was interned, to show cause why a writ of *habeas corpus* should not issue on the ground that Regulation 14B was *ultra vires* and not authorized by the Defence of the Realm Consolidation Act. *Held*, that the rule should be discharged; that Regulation 14B was not *ultra vires*, but was authorized by the express language of the statute. Lord Shaw dissenting. *Rex v. Halliday*, [1917], A. C. 260.

The power of Parliament to authorize such a proceeding was conceded, and the sole question was one of construction of the Act. The chief arguments for the position that the regulation was *ultra vires* were that there was no provision for imprisonment of a British subject without trial; that a statute penal in nature must be strictly construed; and that some limitation must be put upon the general words of the statute, since an unrestricted interpretation would allow opportunity for abuse of the unlimited power thus given the government. The Lord Chancellor, in giving the prevailing opinion, gave as an answer to the latter argument "that it may be necessary in a time of great public danger to entrust great powers to His Majesty in Council, and that Parliament may do so feeling certain that such powers will be reasonably exercised". The House took the view that the order in question was not penal or punitive in character, but merely precautionary,